



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

PIEDMONT REGIONAL OFFICE

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Douglas W. Domenech  
Secretary of Natural Resources

David K. Paylor  
Director

Michael P. Murphy  
Regional Director

### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO KENAN TRANSPORT LLC**

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.34:20, between the State Water Control Board and Kenan Transport LLC, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

#### **SECTION B: Definitions**

Unless the context indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Containment and Cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

6. "Location" means 1800 feet from the intersection with Clarkson Road and State Route 156 (Airport Drive) in Henrico County at Richmond International Airport, where the oil discharge occurred.
7. "Kenan" means Kenan Transport LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, subsidiaries, and parents. Kenan is a "person" within the meaning of Va. Code § 62.1-44.34:14.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. *See* Va. Code §62.1-44.34:14.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
12. "Site" means the facility, land, road, storm drain(s) and surface water(s) adversely affected by the oil discharge.
13. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 11 (Va. Code §§ 62.1-44.34:14 through 62.1-44.34:23) of the State Water Control Law addresses Discharge of Oil into Waters.
14. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
15. "Va. Code" means the Code of Virginia (1950), as amended.
16. "VAC" means the Virginia Administrative Code.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Kenan transports petroleum products to customers via tanker trucks.
2. On November 17, 2009, DEQ staff received notification of a discharge of jet fuel at Richmond International Airport on Airport Drive in Henrico County. Jet fuel is a petroleum product, and is included in the definition of "oil" under Va. Code § 62.1-

44.34:14. The notification indicated that on November 17, 2009, a Kenan tanker truck laden with approximately 8,000 gallons of jet fuel ran off the road and overturned. The impact tore a hole in the side of the tanker truck, allowing the jet fuel to discharge onto the ground and into Gillies Creek. Gillies Creek is a State water.

3. On November 17, 2009, DEQ staff were called to the Location. Emergency response personnel pumped 3,350 gallons of the jet fuel from the tanker truck. Based on observations by DEQ staff, most of the discharge jet fuel soaked into the soil. The jet fuel not adsorbed by the soil was conveyed to Gillies Creek.
4. On November 17, 2009, Marshall Miller & Associates, a consultant hired by Kenan, sent personnel to the Location for Containment and Cleanup of the discharge.
5. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems. Kenan is subject to the statutory prohibition.
6. On January 4, 2010, the Department issued Notice of Violation No. 2009-12-P-201 to Kenan for a discharge of jet fuel to land and Gillies Creek.
7. On January 12, 2010, Kenan called DEQ to discuss the NOV. Kenan waived a meeting at that time, preferring to meet after an Order was drafted.
8. On January 26, 2010, Kenan submitted a report to DEQ detailing the Containment and Cleanup of the Site. The tanker truck was carrying 8,000 gallons of jet fuel and 3,350 gallons were recovered from the overturned tanker truck. Approximately 4,650 gallons were discharged to lands and state waters. A total of 7,000 gallons of a mixture of jet fuel mixed with water and absorbent booms was recovered and transported from the Site for treatment and disposal. In addition, 65 truckloads (1,380.62 tons) of contaminated soil were excavated and transported for treatment and disposal. After sampling confirmed adequate soil removal, the area was restored to its previous condition by bringing in clean soil, and then grading, seeding, and mulching the Site.
9. Based on the results of November 17, 2009 DEQ emergency responder inspection, the police report of the accident, and documentation submitted by Kenan's remediation consultant on January 26, 2010, the Board concludes that Kenan has violated Va. Code § 62.1-44.34:18, which prohibits the discharge of oil into or upon state waters, lands, or storm drain systems, as described in paragraphs C(2) through C (8), above.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted in Va. Code § 62.1-44.34:20, the Board orders Kenan, and Kenan agrees to:

1. Pay a civil charge of \$37,200 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
November 1, 2011	\$9,300 or balance
February 1, 2012	\$9,300 or balance
May 1, 2012	\$9,300 or balance
August 1, 2012	\$9,300

2. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by Kenan. Within 15 days of receipt of such letter, Kenan shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.
3. All payments shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Kenan shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF).

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Kenan for good cause shown by Kenan, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Kenan admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Kenan consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Kenan declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Kenan to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Kenan shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Kenan shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Kenan shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which Kenan intends to assert

will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Kenan. Nevertheless, Kenan agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. Kenan petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - b. The Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Kenan.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Kenan from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Kenan and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Kenan certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Kenan to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Kenan.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Kenan voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 23<sup>RD</sup> day of SEPTEMBER, 2011

A handwritten signature in black ink, appearing to read "Michael P. Murphy", is written over a solid horizontal line.

Michael P. Murphy, Regional Director  
Department of Environmental Quality

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Kenan Transport LLC voluntarily agrees to the issuance of this Order.

Date: 7/28/2011 By: Sacquette A. Musacchia, VP & General Counsel  
(Person) (Title)  
Kenan Transport LLC

State of Ohio  
~~Commonwealth of Virginia~~  
City/County of Stark

The foregoing document was signed and acknowledged before me this 28<sup>th</sup> day of

July, 2011, by Sacquette A. Musacchia who is

Vice President & General Counsel of Kenan Transport LLC, on behalf of the limited liability company.

Charlotte J. Swegheimer  
Notary Public

CHARLOTTE J. SWEGHEIMER  
Notary Public  
State of Ohio  
My Commission Expires March 20, 2016

Registration No. \_\_\_\_\_  
My commission expires: 03-20-2016

Notary seal: